



ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re

)
)
Program and System Information)
Protocol (PSIP) Designation for)
Station WJLP(TV) (formerly KVVN(TV)),)
Middletown Township, New Jersey)
FCC Facility ID No. 86537)

MM Docket No. 14-150

Accepted/Files

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TO: Marlene H. Dortch, Secretary

Federal Communications Commission
Office of the Secretary

For transmission to: The Commission

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**REPLY TO MEREDITH/CBS OPPOSITION
TO APPLICATION FOR REVIEW**

1. PMCM TV, LLC ("PMCM") hereby replies to the Opposition filed jointly by Meredith Corporation ("Meredith") and CBS Broadcasting Inc. ("CBS") (collectively, "the Opposers") in response to PMCM's Application for Review ("Application") in the above-captioned matter.¹

2. In its Application PMCM has challenged efforts made by the Video Division ("Division") to force PMCM to utilize "virtual channel 33" – a term by which PMCM understands the Division to mean major_channel_number 33² – in the operation of

¹ Ion Media License Company, LLC ("ION") filed a separate Opposition to PMCM's Application for Review. Simultaneously herewith PMCM is submitting a separate Reply to the ION Opposition. PMCM's reply to each of the Oppositions is incorporated by reference in its reply to the other.

² The term "virtual channel", as used in ATSC A/65, refers to a two-part number, the first part of which is the "major_channel_number" and the second part of which is the "minor_channel_number". For example, in the two-part virtual channel number – 3.10 – used by Station WJLP, "3" is the major_channel_number and "10" is the minor_channel_number. The Division's reference to a one-part channel number (*i.e.*, 33) as a "virtual channel" is thus

Station WJLP(TV). The validity of the Division's selection of that channel is thus a primary focus of PMCM's Application. Curiously, the Opposers' terse Opposition is essentially non-responsive to PMCM's Application. In its Application PMCM demonstrated that:

the two asserted bases for the Video Division's purported assignment of "virtual channel 33" to Station WJLP(TV) were bogus.³ See PMCM Application at 7-9. The Opposition says nothing about that.

ATSC A/65, Annex B B.1.1(1) expressly provides that WJLP *must* use 3 as its major_channel_number. See PMCM Application at 8-9. The Opposition says nothing about that.⁴

ATSC A/65, Annex B, B.1.1(4) – the provision on which the Division apparently relied to identify "virtual channel 33" as the appropriate channel for WJLP – by its own terms does not apply to WJLP's circumstances. See PMCM Application at 9-11. The Opposition says nothing about that.

reliance on Annex B, B.1.1(4) would fly in the face of longstanding Commission precedent (involving the definition of the term "market") and would lead to nonsensical, internally inconsistent results. See PMCM Application at 12-13. The Opposition says nothing about that.

Had they thought that they might be able to rebut any of those points, the Opposers presumably would have at least tried to do so. Their failure even to attempt some, any, rebuttal may be seen as an effective concession of the correctness of PMCM's arguments.

meaningless, as is the Opposers' reference to a two-part channel number as a "major channel", see Opp. at 3.

³ Indeed, one of those bases was flatly contradicted by ATSC A/65, Annex B in language which the Division's October 23 letter surprisingly paraphrased in supposed support of its bogus claim.

⁴ In fact, the Opposers tacitly concur with PMCM's analysis on this point. At page 2 of their Opposition, they point out that they have used major_channel_number 3 in connection with their own respective operations – CBS's KYW-TV and Meredith's WFSB(TV) – "first as an NTSC channel and then as a digital 'major channel' under [ATSC A/65]." This reflects an apparent recognition that, under Annex B, B.1.1(1), a station's virtual major_channel_number is based on the RF channel number on which the station operated in analog, NTSC mode prior to the DTV transition. As PMCM has repeatedly pointed out, WJLP operated as an NTSC station on RF channel 3 from 2002 until the DTV transition and is, thus, in precisely the same posture as KYW-TV and WFSB(TV) insofar as Annex B, B.1.1(1) is concerned.

3. Rather than present any discernible arguments, the Opposers conclusorily assert that (a) PMCM has “fail[ed] to demonstrate” that the Division’s letters reflect arbitrary and capricious actions and (b) the Division’s effort to force WJLP to use major_channel_number 33 was simply a reasonable means of “preserv[ing] the *status quo ante*”. Opp. at 3. As to the former claim, PMCM stands by its unrebutted analysis described above which conclusively establishes that the purported assignment of major_channel_number 33 was arbitrary, capricious and contrary to the terms of ATSC A/65, Annex B, which the Commission has incorporated by reference into its rules. As to the latter, the Opposers’ claim is surprising because it is the Division, not PMCM, that is attempting to alter the status quo. As explained in PMCM’s Application, the express language of ATSC A/65, Annex B, B.1.1(1) mandates unequivocally that Station WJLP use major_channel_number 3. By attempting arbitrarily to assign an unrelated and unjustified alternate number to WJLP, the Division is the one seeking to alter the status quo.

4. The Opposers do try to take issue, albeit cursorily, with PMCM’s argument concerning Section 316. *See* Opp. at 4-5.⁵ But the Opposers appear not to recognize the problems that that argument poses for them; to the contrary, the Opposers illustrate (presumably unintentionally) those problems.

5. The Section 316 argument is set out in PMCM’s Application at 14-17. It may be summarized as follows. The Division’s November 7 letter purported to suspend WJLP’s program

⁵ In this brief portion of their Opposition, the Opposers appear to suggest (at page 4) that PMCM may somehow have suggested at some point that its entitlement to use major_channel_number 3 may be in doubt. To the contrary, PMCM has consistently taken the position that it is absolutely entitled to use major_channel_number 3; the only issue even arguably in question is PMCM’s selection of its use of minor_channel_numbers 10 *et seq.* for partitioning purposes. While the Opposers suggest that that “portion of major channel 3” is “already in use in WJLP’s service area”, PMCM is not aware of *any* other station in the New York DMA that is using two-part virtual channel 3.10.

test authority pursuant to Section 73.1620(b) of the rules. That section provides for suspension of program test authority for “failure to comply adequately with all terms of the construction permit.” Since the Division itself invoked that section, it must perforce believe that, by operating with major_channel_number 3, PMCM is not complying with the terms of its construction permit. But, as even the Opposers acknowledge, neither a station’s two-part virtual channel number nor its major_channel_number alone is a term of the station’s permit – so Section 73.1620(b) cannot be applicable and no basis exists for suspending WJLP’s operating authority. But if the Division is correct and the purported October 23 assignment of “virtual channel 33” did constitute a term of WJLP’s construction permit, then that assignment must have modified the permit, in which case the constraints imposed by Section 316 should apply.

6. In other words, either the major_channel_number is not an element of the construction permit – in which case Section 73.1620(b) cannot by its own terms come into play here – or the major_channel_number *is* an element of the permit, in which case the October 23 letter constituted a permit modification subject to the terms of Section 316, terms which were clearly not met here.

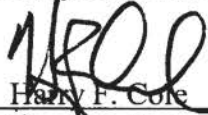
7. Consistent with their apparent disinclination to address PMCM’s arguments, the Opposers also fail to mention (much less rebut) PMCM’s argument concerning Section 1452(g) of the Middle Class Tax Relief Act. They also don’t mention (much less challenge) the fact that there are no fewer than 105 situations, in place for years already, in which non-commonly-owned stations with overlapping service areas use identical two-part virtual channel numbers in apparent violation of ATSC A/65, Annex B. And while they refer (at page 2) in passing to

"Commission precedent" that supposedly holds against WJLP's use of major_channel_number 3, the Opposers cite no such precedent.⁶

8. It should also be noted that the Opposers have not even attempted to show that WJLP's use of virtual channel 3.10 has caused any problem at all in any respect. (The same is true for ION as well.)

9. Having declined the opportunity to demonstrate any arguable flaws in PMCM's arguments, the Opposers may be understood to have conceded the validity of those arguments. And even if the Commission is unwilling to interpret the sparse Opposition as such a concession, the sparseness of the Opposition prevents the Commission from according it any weight at all.

Respectfully submitted,


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December 10, 2014

⁶ The only "precedent" that has been cited previously in this proceeding is the *Seaford, Delaware* case (25 FCC Rcd 4466 (Video Div. 2010)). As PMCM has demonstrated, *Seaford* is inapposite to this case because, *inter alia*, *Seaford* involved the allotment of a vacant channel not already assigned to a station, leading to a situation governed by ATSC A/65, Annex B, B.1.1(2). Here, of course, WJLP's channel 3 has been assigned to WJLP for more than a decade. PMCM does note, though, that while the Video Division happily resolved a dispute concerning the major_channel_number to be assigned the Seaford channel at the allocation stage – *i.e.*, before any construction permit applications had even been filed – in its April 17, 2014 letter to PMCM, the Division claimed, without citing any precedent, that "objection to virtual channel designations is customarily considered after grant of the license modification application." The discrepancy between that statement and the *Seaford* decision suggests that, in fact, the Division has no real policy or precedent in this regard.

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 10th day of December, 2014, I caused copies of the foregoing "Reply to Meredith/CBS Opposition to Application for Review" to be placed in the U.S. Postal Service, first class postage prepaid or, as noted below, sent by electronic mail to the following:

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